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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re ACACIA MEDIA TECHNOLOGIES CORPORATION	)	Case No. 05 CV 01114 JW MDL No. 1665 **SEPARATE STATEMENT OF PLAINTIFF ACACIA MEDIA TECHNOLOGIES CORPORATION REGARDING NEW BRIEFING SCHEDULE FOR DEFENDANTS' PENDING MOTIONS FOR SUMMARY JUDGMENT** Date: N/A Time: N/A Ctrm: No. 8, 4th Floor Judge: Hon. James Ware

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I. INTRODUCTION

Pursuant to the Court's Order of October 30, 2008, the parties have met and conferred in an effort to reach agreement as to a new briefing schedule for defendants' pending motions for summary judgment. The parties, however, were unable to reach an agreement and therefore the parties are filing separate statements.

II. ACACIA'S PROPOSED BRIEFING SCHEDULE

Plaintiff Acacia Media Technologies Corporation ("Acacia") proposes that 33 days be added to the original scheduled filing dates for each of the of the opposition brief and the reply brief. Accordingly, Acacia proposes these new dates:

Opposition Briefs to be filed by Acacia – on or before November 26, 2008; and

Reply Briefs to be filed by Defendants – on or before February 11, 2009.

III. THE COURT SHOULD ADOPT ACACIA'S BRIEFING SCHEDULE

Acacia's proposed schedule is fair and reasonable. Originally, Acacia's opposition briefs were due on October 24, 2008 and defendants' reply briefs were due on January 9, 2009. When the Court issued its OSC on October 9, 2008, Acacia suspected the motions might be mooted, it requested the Court to vacate the earlier briefing schedule, stopped working on the briefs, and cancelled its expert's trip to Los Angeles to work on his declaration. Immediately thereafter, the Court issued an order vacating the original briefing schedule.

In light of the needed resumption of briefing following this Court's denial of Plaintiff's motion for summary judgment, Acacia expressed its need to extend the time for its opposition brief to November 26 due to Acacia's inaccessibility to its technical expert before November 13. Defendants did not oppose that revised briefing date for Defendants' opposition brief. Our dispute relates only to the filing deadline for Defendants' reply brief.

Plaintiff proposed February 11, 2009 as the new date for the filing of Defendants' reply briefs. That date would add the same 33 days Plaintiff will have added to its date. Defendants proposed March 16, 2009, a 66-day extension from the original date which was not acceptable to Plaintiff. Plaintiff then proposed to split the difference and set the deadline for the filing of the

Defendants' reply briefs to February 27, 2009. That proposed compromise date was also not acceptable to Defendants.

Defendants' arguments that Plaintiff's proposal to tack on the same 33 days to each side's filing deadline is unfair rests on the erroneous, factual assumption that Plaintiff has and will use the time from mid-October to mid-November to work on its opposition brief. That is not true. We have not and will not do any further work on the opposition brief until our expert returns on November 13. Until our expert returns, we are unable to proceed further. Accordingly, it is not functionally correct that Plaintiff has received more time that will be used preparing briefs than Defendants will receive under Plaintiff's proposal.

Defendants make the additional argument that they need an additional 33 days beyond the 33-day extension proposed by Plaintiff to "consider and respond" to Acacia's "voluminous" submission, to schedule a deposition of Acacia's expert, if necessary, and to consider whether an expert of their own is necessary, and, if so, "find and work with such expert." These reasons, however, do not justify the additional 33 days sought by defendants, because each of these issues would have applied equally if the parties had followed the original, stipulated briefing schedule.

IV. CONCLUSION

Acacia respectfully requests that the Court adopt its briefing schedule and order that opposition briefs be filed by November 26, 2008 and reply briefs be filed by February 11, 2009.

DATED: November 5, 2008

Respectfully submitted,

HENNIGAN, BENNETT & DORMAN

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